



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1998

Ms. Pam Watson
City Secretary
City of Athens
508 East Tyler Street
Athens, Texas 75751

OR98-0545

Dear Ms. Watson:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 113490.

The City of Athens (the "city") received a request for certain information on residential and commercial burglaries. The requestor asked that she be allowed to come in once a month and review police records in order to locate the following information: victims' names, addresses of occurrences, telephone numbers, city, zip codes, types of offense, and dates of occurrence. You submitted to this office for review the type of information that is requested. One format is the actual radio call sheet that contains the information requested. The other format is a computer printout that has the offense, date, and location, but contains no identifying information about the victim. You assert that providing the identifying information "would invade a citizen's right to privacy." You ask what information, if any, must be provided in response to this request.

We note initially that the requestor did not specify a time period for the burglary information, but rather submitted a standing request for burglary information as it is filed. A governmental body is not required to provide information that does not exist at the time a request for records is submitted. Open Records Decision Nos. 561 (1990) at 9 (city does not have to obtain new information); 483 (1987) at 2; 452 (1986) at 3 (open records request applies to information in existence when request is received); 362 (1983) at 2 (city does not have to supply information which does not exist). Thus, this office has previously ruled that a governmental body is not required to comply with a standing request to provide information on a periodic basis as it is created. Attorney General Opinion JM-48; Open Records Decision Nos. 476 (1987), 465 (1987). Therefore the city may, but is *not required* under chapter 552 to provide information in response to this type of request.

Since you submitted documents to this office and specifically ask about the privacy interests of citizens who have been burglarized, we will address your concern that release of identifying information about burglary victims would implicate individual privacy interests. Generally, front page offense and arrest report information is considered public information that must be disclosed. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We have enclosed a list of information that is generally considered to be public. Please note that the front page offense information which generally must be released includes the identity of the complainant (who may be the victim) the location of the crime, and a detailed description of the offense.

However, there are certain types of crimes in which the release of identifying information about the victim and a detailed description of the offense may implicate an individual's common-law privacy interests. In *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court said that information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. The type of information the Supreme Court considered intimate and embarrassing included information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* In Open Records Decision No. 262 (1980), this office stated that information about a patient's injury or illness might be protected under common-law privacy if such injury or illness relates to drug overdoses, acute alcohol intoxication, gynecological or obstetrical illnesses, convulsions and seizures, or emotional and mental distress. *See also* Open Records Decision No. 539 (1990) at 5 (information concerning emotional state may be protected by common-law privacy).

Thus, in Open Records Decision No. 339 (1982), this office determined that all identifying information regarding a sexual assault victim must be withheld from disclosure. That opinion stated:

The mere fact that person has been the object of a rape or attempted rape does, we believe, reveal "highly intimate or embarrassing facts" about the victim, and, in our view, disclosure of this fact would be "highly objectionable to a person of ordinary sensibilities." Although there is certainly a strong public interest in knowing that a crime has been committed, we do not believe that such interest requires the disclosure of the names of the victims. Furthermore, certain other information, such as the location of the crime, might furnish a basis for identification of the victim.

Id. at 2-3. *See also* Open Records Decision No. 393 (1983) (identifying information about child sexual assault victim "inextricably intertwined" with narrative portion of report and so

entire report must be withheld). However, none of information submitted to this office is protected from disclosure on the basis of privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 113490

Enclosures: Submitted documents
Summary of Open Records Decision No. 127

cc: Ms. Patricia Evans
Statistics Coordinator
3334 S.S.W. Loop 323, Suite 119
Tyler, Texas 75701
(w/ summary of Open Records Decision No. 127)